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Chairman: Mr. ESCOVAR SALOM (Venezuela)

Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses: Mr. YAMADA

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The meeting was called to order at 10.05 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

1. The CHAIRMAN recalled that, in its resolution 49/52, the General Assembly had decided that at the beginning of its fifty-first session, the Sixth Committee should convene as a working group of the whole, from 7 to 25 October 1996, to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission and in the light of the written comments and observations of States and views expressed in the debate at the Assembly's forty-ninth session. The Group of Asian States had nominated Mr. Yamada (Japan) for the office of Chairman of the Working Group of the Whole.

2. Mr. Yamada (Japan) was elected Chairman of the Working Group of the Whole by acclamation.

3. Mr. Yamada (Japan) took the Chair.

Adoption of the agenda of the Working Group of the Whole (A/C.6/51/NUW/L.1)

4. The agenda was adopted.

Election of the Chairman of the Drafting Committee

5. Mr. YAMADA (Chairman of the Working Group of the Whole) said that the Group of Western European and Other States had nominated Mr. Lammers (Netherlands) for the office of Chairman of the Drafting Committee.

6. Mr. Lammers (Netherlands) was elected Chairman of the Drafting Committee by acclamation.

7. Mr. YAMADA (Chairman of the Working Group of the Whole) recalled that, in its resolution 49/52, the General Assembly had requested the Secretary-General to arrange for the presence of the Special Rapporteur on the law of the non-navigational uses of international watercourses as an expert during the debates on the topic at its fifty-first session. He therefore invited Mr. Robert Rosenstock, who had been the Special Rapporteur when the Commission had adopted the draft articles on that topic, to take a place at the Committee table as expert consultant.

8. Mr. Rosenstock took a place at the Committee table.

Organization of work

9. Mr. YAMADA (Chairman of the Working Group of the Whole) recalled that the annex to General Assembly resolution 49/52 set out the procedure to be followed by the Working Group in elaborating the framework convention. The Working Group

was to start at once with a discussion of the draft articles on an article-by-article basis, without prejudice to the possibility of simultaneously considering closely connected articles. Once considered by the Working Group, each article or group of articles should be referred to the Drafting Committee for examination in the light of the discussion. The Drafting Committee should make recommendations to the Working Group in relation to each article or group of articles. It should also prepare and present to the Working Group, for its approval, a draft preamble and a set of final clauses. The Working Group should endeavour to adopt all texts by general agreement. Failing such an agreement within a reasonable period of time, it would take its decisions in accordance with the rules of procedure of the General Assembly.

10. In preparation for the current meeting, the Legal Counsel had convened informal consultations with representatives of the Permanent Missions to the United Nations, which had resulted in the formulation of recommendations concerning methods of work. In particular it had been recommended that the Drafting Committee should be open-ended and that in order to facilitate maximum participation by all interested delegations there should be no simultaneous meetings of the Working Group and the Drafting Committee. Furthermore, it had been considered that it would be prudent to divide the draft articles into clusters for the purpose of discussion in the Working Group. After each cluster had been discussed, it would be sent to the Drafting Committee. When appropriate, coordinators would be designated to conduct informal consultations on controversial issues. A draft preliminary programme of work covering both the Working Group and the Drafting Committee was being circulated for consideration.

11. Mr. LEGAL (France), speaking on a point of order, said that the informal consultations had not resulted in any recommendations.

12. The CHAIRMAN said that he would take note of the observation made by the representative of France.

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (A/49/10 and A/49/355; A/51/275 and Corr.1 and Add.1)

Cluster I (articles 1, 3 and 4)

13. Mr. MANNER (Finland) recalled that General Assembly resolution 2669 (XXV), which had recommended that the International Law Commission should take up the study of the law of the non-navigational uses of international watercourses, had resulted from a Finnish initiative. In advocating codification of that law or endorsing the Helsinki Rules, the Government of Finland had not been motivated by special reasons or national interests, since questions relating to the use and maintenance of Finland's border watercourses had already been satisfactorily regulated at that time through bilateral agreements with its three neighbouring States.

14. In its explanatory memorandum of 1970, the Government of Finland had presented several reasons why rules of international law regulating the use of international watercourses should be further developed and codified. The rapid and continuing growth of the world population, together with technological and industrial expansion, had created a need to preserve and seek optimal use of natural resources, among which freshwater resources were of vital importance. It had been foreseen that the competition between different uses and users of limited water resources was likely to increase the possibility of conflicts between States. Despite the existence of hundreds of bilateral or regional agreements regulating the use of international watercourses, it had been felt that those rules and prevailing customary international law were still vague and did not cover all the practical problems which might arise between riparian States, especially the problem of water pollution.

15. The rationale behind that initiative had stood the test of time and in his view the adoption of the draft articles, with such amendments as might be necessary, would still contribute considerably to the development of the international law of the non-navigational uses of international watercourses, despite the delay in finalizing the draft articles in the International Law Commission, owing to the complexity of the subject.

16. In its recent comments on the Commission's draft articles, the Government of Finland had drawn attention to the recommendations contained in Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development, in the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and in the Convention on Environmental Impact Assessment in a Transboundary Context. Those recommendations should be reflected in the draft articles, and both the later developments and the earlier phases of the issue should be mentioned in the preamble to the convention.

17. Turning to cluster I, he welcomed the fact that the protection of international watercourses from the adverse effects of human activities had been addressed in the draft articles. In article 1, paragraph 1, the word "protection" should be inserted before the words "conservation and management" in order to fully reflect the nature of the measures covered by Part IV of the draft articles.

18. Article 3 took into account the possibility that watercourse States might enter into watercourse agreements. However, the relationship between such agreements and the draft articles remained unclear and could, perhaps, be regulated more precisely. As was implied in the commentary, article 3 was not designed to apply to regional agreements whose nature and purpose were similar to those of the draft articles; the relationship between such parallel agreements and the draft articles was thus not clear. Furthermore, existing watercourse agreements might include provisions whose relationship to the draft articles would likewise be unclear. The wording of the article should therefore be clarified in that respect. It had been suggested that a clause expressly safeguarding existing watercourse agreements should be inserted. For environmental reasons, however, it would be tempting to say that the future

convention would overrule existing agreements when they included provisions which might adversely affect the environment.

19. Portugal's written proposals concerning article 3 (A/51/275) were interesting, for they were aimed at enhancing the protection of watercourses and their ecosystems and prohibiting regression in the substantive regulation of a particular situation.

20. In their written comments, some States had expressed the view that article 4, paragraph 2, was detrimental to the freedom of States and should be deleted. In its comments concerning article 21, however, Finland had pointed out that the threshold between unlawful injury and tolerable injury was determined by using the term "significant harm". The same threshold of "significance" also appeared in articles 3, 4, and 7. Finland was concerned that express mention of "significance" could be interpreted as legitimizing the causing of harm up to the limit of significant harm, an adverse consequence which would hardly be politically desirable. The articles should therefore refer merely to "harm" instead of "significant harm".

21. Attention should also be drawn to the different selection of words in articles 3 and 4. In its commentary to article 4, the Commission had stated that the meaning of the term "significant" was explained in the commentary to article 3. In the latter article, however, the term "significant extent" was qualified by the words "adversely affect", which were missing from article 4. According to the current wording of article 4, a State suffering from harm which was not significant would not be entitled to participate in the consultations on, and in the negotiation of, an agreement, or to become a party thereto. On the other hand, a State whose use of an international watercourse might be positively affected to a significant extent would be entitled to participate. His delegation was therefore not completely convinced that the article was appropriately drafted.

22. Mr. ISKIT (Turkey) said that the regulation of international watercourses had acquired vital importance in relations between States, particularly in regions where water resources were scarce.

23. Turkey had a very special geographical situation with regard to international watercourses. It was the upstream riparian State in the case of two major international transboundary rivers, the Euphrates and the Tigris, and was also the downstream riparian State in the case of two other rivers. Also, two rivers constituted the whole or part of its borders with two of its neighbours. That was why Turkey attached the utmost importance to the Commission's work on the convention under consideration. Its approach was based on the belief that, since water was a finite commodity, the utilization of international watercourses should be tied to common understandings and principles.

24. His country's general position on the draft articles was that their main purpose should be to achieve an equitable and reasonable arrangement regulating water utilization between watercourse States. Other considerations, such as

preventing possible damage, should be subsidiary to that general approach. Also, the concept of sustainable development should be given more prominence. Lastly, the aim should be to elaborate a framework convention enacting the basic principles and setting forth the conceptual basis for eventual bilateral or regional arrangements regarding specific watercourses to be concluded between the watercourse States concerned, taking into account their respective characteristics. Provisions which were too specific and detailed should therefore be avoided.

25. Article 1, which defined the scope of the draft articles, had correctly left out the navigation issue. Nevertheless, the second paragraph touched on that issue by foreseeing that it would be included within the scope of the draft articles if other uses of the water either affected or would be affected by navigation. That approach gave priority to the draft articles in the application of rules related to mixed use involving both navigation and other water uses simultaneously. However, in practice, it would not be appropriate to make a ruling on a specific case involving mixed use on the basis of the draft articles without having a thorough knowledge of the specific characteristics of the watercourses in question. To avoid any such complications, it was preferable either to exclude the navigation issue altogether or to ensure that the problems of mixed use mentioned in paragraph 2 did not fall solely within the scope of the draft articles.

26. Mr. LEGAL (France) recalled that in paragraph 3 of its resolution 49/52 the General Assembly had asked the Sixth Committee to elaborate a framework convention on the law of the non-navigational uses of international watercourses. There was no agreement, however, on the definition of a "framework convention" or on the relationship of such a convention to other conventions already concluded in that area. In his view, a framework convention was not an autonomous instrument, and thus specific conventions must be concluded for its implementation. Articles 1 and 3 must clarify the relationship between the framework convention and existing conventions and must make the former's status as a non-autonomous instrument clear.

27. Article 1 must also convey the idea that a framework convention had no direct effect in law. To that end, he proposed the addition of a third paragraph, which ought to eliminate any possible ambiguity: "The present articles apply only to watercourses on which agreements have been concluded which refer explicitly to it [the framework convention]." Article 3 should also be redrafted to reflect the situation of agreements concluded both prior to and subsequent to its entry into force.

28. Mr. HARRIS (United States of America) said that article 1 of the draft had not intended to establish rules on the conservation and management of living resources such as fish, for example. If that had been the case, it would have included numerous regulatory provisions for such activities. Nevertheless, the conservation and management of living resources did appear to fall within the broad definitional scope of article 1, paragraph 1. To clarify that issue, his Government suggested that the following additional paragraph should be added to article 1: "This Convention does not apply to the conservation and management

of living resources that occur in international watercourses except to the extent provided for in Part IV and except insofar as other uses affect such resources."

29. Mrs. ESCARAMEIA (Portugal) said that her delegation supported the proposal of Finland with regard to article 1. With regard to the comments made by the representative of France on the nature of a framework convention, her delegation did not view such an instrument as being merely for reference or a supplement to bilateral agreements; it carried more weight than an instrument that was observed voluntarily.

30. Mr. NEGA (Ethiopia) commended the International Law Commission for its hard work in developing the draft articles. He hoped that the preliminary comments and observations of delegations would be considered carefully in an effort to balance the views of all States.

31. As to the new proposal regarding the relationship between the future framework convention and existing bilateral or multilateral watercourse agreements, it was his understanding that the draft articles were intended to provide a general framework of rules and principles that would be applicable to future watercourse agreements among concerned watercourse States. The omission from the current draft articles of any reference to existing agreements was not accidental, but the result of a decision taken by the International Law Commission which his delegation fully supported.

32. The continued validity and application of existing watercourse agreements would depend on two factors. First, they would remain valid only if they were not in contradiction with the fundamental principles and objectives set forth in the draft articles, in particular the principle of equitable and reasonable utilization of international watercourses. Second, such agreements would remain valid if the parties to them wished to continue to be bound by them in their future relations. No express exclusion of such agreements from the scope of the draft articles was therefore possible. His delegation objected to the inclusion of any provision that would exclude existing watercourse agreements from the scope of the convention, since that would entail the rejection of the principle of equitable and reasonable utilization.

33. Mr. SABEL (Israel) said that article 1 should establish from the outset that the convention did not affect existing agreements or binding customs. A clause should be included to the effect that issues not covered by the convention would continue to be covered by customary law. It might also be useful to combine article 2, "Use of terms", with article 1.

34. Mr. SMEJKAL (Czech Republic) said that the position of his delegation was that the framework convention represented a supplementary, progressive development of international law rather than a codification exercise. Therefore, it fully supported the proposal of France with regard to article 1.

35. Mr. TOMKA (Slovakia), referring to the proposal by Finland to insert "protection" before "conservation and management" in article 1, wondered whether

the term "conservation" would cover both "protection" and "preservation". In any case, the wording of the title of Part IV should be made consistent with the final wording of that paragraph.

36. It seemed useful to be guided by other framework conventions, such as that concerning climate change, in dealing with the question of limits to implementation. The United States proposal to add a third paragraph to article 1 had merit. Although the restructuring of articles 1 and 2 proposed by Israel was not a major issue to his delegation, it seemed unnecessary, as those articles followed the normal pattern for such conventions.

37. Mr. PRANDLER (Hungary) said that his delegation supported the Finnish proposal regarding article 1. In his view, the terms "protection" and "conservation" did not have the same meaning.

38. His delegation believed that the reference to the navigation issue was appropriate in article 1, paragraph 2. As both an upstream and downstream riparian State, Hungary hoped that a solution could be found that would meet the concerns of both.

39. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the relationship between the framework convention and existing and future conventions, as reflected in article 1, required further clarification. The view expressed by the representative of France that a framework convention had no autonomous effect should be explored further. Her delegation supported the proposal of Finland with regard to article 1, paragraph 1, but would also add the word "utilization" after "preservation".

40. Ms. FLORES (Mexico) said that, in general, the text was well balanced, and her delegation was prepared to work towards its completion at the current session. It supported the proposals of both Finland and Argentina regarding additions to article 1, paragraph 1. Although she agreed with the representative of France, she also agreed with the representative of Portugal that the framework convention should have effect where no prior convention existed.

41. Mr. THAHIM (Pakistan) said that the expression "and of their waters" in article 1, paragraph 1, was superfluous and should be deleted because, by definition, a watercourse consisted of not only a channel, but also the water flowing through it. Article 3 was unclear as to whether the framework convention would apply only to watercourse agreements concluded after it came into force or also to watercourse agreements concluded previously; it was his understanding that agreements concluded previously would remain in force. The framework convention's purpose was not to supplant existing treaties, but to facilitate their implementation. To eliminate any ambiguity on that score, he proposed the insertion of a separate article, entitled "Relation to other international agreements", which would read, "This Convention shall not alter the rights and obligations of States which arise from other bilateral, regional or subregional agreements already in force between them".

42. Ms. GAO Yanping (China) said that the draft articles prepared by the International Law Commission represented a realistic, balanced approach to the need to reconcile the different interests of watercourse States. She agreed that article 1 should clarify that the framework convention was not intended to supplant existing or future bilateral or multilateral watercourse agreements.

43. Mr. NUSSBAUM (Canada) supported the inclusion in article 1 of wording that excepted existing treaties and customary rules from the scope of the draft articles. He proposed that the words "except as may be provided otherwise by convention, agreement or binding custom among the watercourse States" should be inserted at the end of article 1, paragraph 1, to reflect the wording of article I of the 1966 Helsinki Rules. He also supported the proposals put forward by the representatives of Finland and Argentina.

44. Mr. THUITA MWANGI (Kenya) said that the draft articles struck a balance among conflicting interests, and care must be taken to maintain that balance. He agreed with the representative of Ethiopia that no additional paragraph should be inserted to exclude existing agreements or arrangements from the scope of the framework convention, since that would prejudice the convention's basic purpose, which was to set out general principles in order to facilitate negotiations on all international watercourse agreements. The amendment proposed by Pakistan was interesting, but should not be inserted in article 1; the Working Group should wait until it had completed its discussion of the entire convention before deciding on the matter.

45. Mr. WELBERTS (Germany) said that his country's experience had demonstrated the importance of close international cooperation with respect to international watercourses. He agreed that the framework convention should not affect existing bilateral or multilateral agreements, and said that his delegation would carefully consider the proposals of Argentina and Canada. He supported Finland's proposal to insert the word "protection" in article 1, paragraph 1, so as to bring the wording into line with that of part IV of the convention.

46. Mr. de VILLENEUVE (Netherlands) agreed with the representative of Mexico that international rules should be adopted for negotiations on new international watercourse agreements. He preferred to await the outcome of the Working Group's discussions before deciding whether the draft articles should constitute a framework or supplementary convention, and wondered whether the text could be partially binding (in terms of the principles it set forth) and partially supplementary.

47. Ms. KALEM (Uganda) said that existing international watercourse agreements in Africa had been negotiated by the former colonial Powers and that some of them were prejudicial to her country. Consequently, the draft convention should not be amended to specify that it would not affect existing agreements.

48. Mr. MAZILU (Romania) said that he strongly preferred to retain the current wording of article 1, paragraph 1, and fully shared the views of Slovakia and Germany in that regard. He also supported the Turkish proposal concerning paragraph 2 as well as the United States proposal, which should appear as

paragraph 3 of article 1. Moreover, the preamble of the framework convention should refer to the excellent work done by the International Law Commission in preparing the draft articles; he would submit a written proposal to that effect.

49. Ms. SINJELA (Zambia) said she hoped that the framework convention would not affect existing international watercourse agreements, since her country had recently adopted a protocol on shared watercourse systems in the Southern African Development Community, which had been drafted on the basis of the draft articles currently under consideration.

50. Mr. TANZI (Italy) said that he had no objection to including a retroactivity clause in article 3 so as to reassure States that had concluded satisfactory bilateral and multilateral agreements that those agreements would remain valid. To address the concerns expressed by some delegations, he proposed the insertion of wording to the effect that, in cases where previously concluded watercourse agreements conflicted with the framework convention, the States parties to such agreements should endeavour to bring them into conformity with the framework convention. It was important that the framework convention should have some normative effect with regard to future negotiations, so that States parties could not conclude agreements that ran counter to the general principles set forth in it.

51. Ms. MEKHEMAR (Egypt) said that the Working Group must determine whether it was considering a convention or international rules of conduct. In any case, she agreed with the representative of France that it was important to specify that the framework convention would not affect existing and future watercourse agreements or the acquired rights of States.

52. Mr. BENÍTEZ SÁENZ (Uruguay) said it was his understanding that the Working Group was considering a convention for use as a frame of reference for issues relating to international watercourses. He agreed with the representative of Argentina that article 1 should specify that the framework convention did not affect existing watercourse agreements.

53. Mr. AL-HAYEN (Kuwait) said that he supported the proposals of Finland and the United States of America with regard to article 1 and agreed with the representative of Pakistan that there was no need to make a separate reference to the waters of international watercourses. He would also prefer to switch the order of articles 1 and 2.

54. Mr. DOS SANTOS (Mozambique) said that the principles of sustainable development and environmental protection should be thoroughly addressed in the draft articles. He supported the insertion of the word "protection" in article 1, paragraph 1. He agreed with the representative of Zambia that the framework convention should specify that it did not affect existing watercourse agreements, since his country, like Zambia, had adopted the protocol on shared watercourse systems in the Southern African Development Community.

55. Mr. ROSENSTOCK (Expert Consultant) said that he saw no problem with the insertion of the word "protection" in article 1, paragraph 1, since the

International Law Commission had not intended to make a distinction between the wording of that paragraph and that of Part IV. He agreed that the separate reference to the waters of international watercourses was not essential, but the Commission had wished to emphasize that those waters were included in the scope of the framework convention. The United States proposal would merely make explicit what was already implicit, since the living resources of international watercourses were dealt with only in Part IV. With regard to the proposed deletion of paragraph 2 of article 1, the reasons for the inclusion of that paragraph were noted in paragraph 4 of the commentary on article 1.

56. The framework convention was not intended to override all other agreements on international watercourses; rather, it had no effect at all on those agreements, and neither validated nor invalidated them. However, if delegations wished to include a specific reference to the relationship between the framework convention and existing and future agreements, they could do so more easily in the context of article 3. More problematic was the French delegation's view that the convention's validity would derive from its reflection in other agreements. The intention had been to elaborate not model rules, but a framework convention, as decided in General Assembly resolution 49/52. That resolution also addressed the issue of bilateral and multilateral agreements, indicating that they should not be affected by the adoption of a new international instrument unless the parties to those agreements had otherwise decided.

57. Mr. MORSHED (Bangladesh) said that his delegation supported the proposed Finnish amendment to article 1, paragraph 1, and also supported the views expressed by the representative of Italy. To void the framework convention of all normative substance would be retrogressive and contrary to the mandate given to the International Law Commission to codify and develop international law on the subject.

58. Mr. LEGAL (France), replying to the comments made by the Expert Consultant, said he had never proposed that the framework convention should be converted into a draft model law. He had simply suggested that its scope should be clarified, and that one way of doing so would be for the scope to be determined by special implementing agreements, an option which his delegation would prefer.

59. Generally speaking, while his delegation appreciated the constructive nature of the Expert Consultant's remarks, it would prefer for any statements presenting the draft articles to be made prior to the discussion, and for the Expert Consultant to refrain from commenting on the political positions adopted by sovereign States.

60. He expressed support for the Israeli proposal that the Working Group should reach agreement in principle on the scope of the draft articles and invited the Chairman of the Working Group to express his views on the subject.

61. Mr. YAMADA (Chairman of the Working Group of the Whole) said that he would express an opinion on the question referred to by the French representative at a later time. As article 1 was closely related to draft article 3, he would

prefer for the Working Group to discuss article 3 before taking a separate decision on article 1.

62. Mr. RAO (India) said that by its very nature, a framework convention set a higher standard, in terms of normative rules, than what his delegation would have preferred. In view of the different characteristics of river systems and the histories of their particular uses, model rules would have been more appropriate. Nevertheless, as the Expert Consultant had pointed out, article 1 and other articles indicated that the framework convention simply offered guidelines, giving the States parties concerned complete flexibility, and that existing or future agreements would in no way be affected by its adoption.

63. Mr. MAZILU (Romania) said that his delegation appreciated the comments made by the Expert Consultant and believed that his comments would be most helpful to the Working Group if they were made at the end of the debate.

64. Mr. CALERO RODRIGUES (Brazil) said that his delegation was satisfied with the draft articles as presented and did not intend to propose any changes to them. The Finnish proposal, which brought the wording of article 1 into conformity with Part IV of the draft, appeared to elicit general agreement; his delegation also supported it. As the draft convention was silent on the subject of existing agreements, his delegation believed that, in accordance with a general principle of law, they would not be affected by it; however, his delegation had no objection to including in the draft an express stipulation to that effect.

65. The French proposal, however, was unacceptable to his delegation, as it meant that the framework convention would have no effect unless it was supplemented by a watercourse agreement. That was not the intention behind a framework agreement, and it was not the basis on which the Commission had worked. The text that was adopted would be valid and applicable between States parties. It could be modified in relation to a particular watercourse by a specific additional agreement, but if States did not feel the need to adjust its provisions, then it would apply irrespective of any pre-existing watercourse agreements.

66. Mr. HAMDAN (Lebanon) said that the draft was well balanced and was supported by all delegations. As the representative of Italy had suggested, States should be encouraged to endeavour to reconcile pre-existing agreements with the new convention.

67. Mr. ISKIT (Turkey) agreed with the representative of France that the Expert Consultant's comments should be heard at the beginning of the discussion. The Commission had finished its work; the Expert Consultant's views were already on record. The members of the Working Group, as the representatives of sovereign States, must now negotiate a final text of the draft articles. If the Expert Consultant spoke at the end of the discussion, he would appear to be intervening in that process.

68. His delegation would be grateful if the Chairman could explain how the division of labour between the Working Group and the Drafting Committee was to be determined. In the Turkish delegation's view, it fell to the Working Group to decide which proposals were of a substantive nature and which pertained to drafting.

69. Mr. YAMADA (Chairman of the Working Group of the Whole) said that the Expert Consultant's role was not to introduce each draft article, but to draw attention to its legislative history within the International Law Commission. Nevertheless, he would hold consultations on how to proceed.

70. As to the division of labour between the Working Group of the Whole and the Drafting Committee, it was the Working Group's task to determine the substance of the draft articles and the nature of any proposed amendments, while the Drafting Committee's main function was to negotiate a text of the draft articles in accordance with guidelines to be established by the Working Group.

71. Ms. BOUM (Cameroon) said that, in her experience, the Expert Consultant's role was to intervene at the start of the debate in order to determine whether the Commission should adopt a position on the views being expressed. It was the Chairman's role to summarize the discussion. She urged the Chairman to hold consultations on the matter as soon as possible.

72. Mrs. BRODARD (Observer for Switzerland) said that, as stipulated in paragraph 1 of article 3, States could enter into one or more agreements which applied and adjusted the provisions of the framework convention. That provision was intended to specify, at least in part, the nature of the general framework convention that would emerge from the current negotiations. While the framework convention would apply to the conclusion of future watercourse agreements, States parties wishing to conclude a watercourse agreement would be free to depart from its provisions, if they so wished. Nowhere in the draft articles was it stated that the watercourse agreements thus concluded must be interpreted in the light of articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties.

73. As far as future watercourse agreements were concerned, the draft articles appeared to be satisfactory; such was not the case, however, where existing agreements were concerned. That question was of vital importance to her country, whose international waterways were almost wholly governed by existing agreements with neighbouring States.

74. It might reasonably be argued that, since future watercourse agreements could depart from the framework convention, the same was true for existing agreements. Nevertheless, if the draft articles did not specify that existing agreements remained valid, there was a possibility that dissatisfied parties to such agreements might challenge them on grounds of their alleged incompatibility with the framework convention, and especially with the principle of "equitable and reasonable use" embodied in articles 5 and 6.

75. In order to avoid that eventuality, which would have disastrous consequences for international law, her delegation proposed that article 3 should be amended by including a new paragraph 4, which would read: "The present articles shall in no way affect existing watercourse agreements, whose provisions shall be interpreted in accordance with the general rules of international law concerning the interpretation of treaties".

76. Mr. LEGAL (France) said that the scope of the framework convention should be determined by riparian States at the time they concluded watercourse agreements. That implied, first, that the States concerned had ratified the framework convention and, second, that a reference to the convention was contained in a watercourse agreement indicating to which watercourse it applied. His delegation therefore proposed that paragraph 1 of article 3 should be amended to read "Watercourse States ... which may apply and adjust the provisions of the present articles or of some of them ...".

77. Moreover, article 3, paragraph 3, appeared to be superfluous and should be replaced by a new paragraph reading:

> "The present articles shall, prior to their entry into force, have no effect on existing watercourse agreements, except as otherwise expressly agreed by all the parties thereto".

78. Mr. HARRIS (United States of America) said that article 3 posed the greatest conceptual difficulties of all the draft articles, because it was always difficult to express the relationship between a new comprehensive agreement and existing bilateral and multilateral agreements on a particular subject. The draft articles were silent on the question of the relationship between the new convention and pre-existing watercourse agreements; his delegation shared the view already expressed that such agreements must be preserved. That could be ensured by adding a provision drafted along the following lines: "This convention will not alter the rights and obligations of a watercourse State arising under other agreements in force on the date on which it becomes a party to the convention."

79. Another problem arose in cases where an existing agreement was silent on an issue covered by the convention. If the parties to such an agreement had not intended it to provide comprehensive regulation of a watercourse, it might be argued that the new convention should fill those gaps. On the other hand, silence on a particular issue might reflect the outcome of arduous negotiations. His delegation therefore proposed that the Working Group should consider adding a provision that would enable each State, at the time it became a party to the convention, to state whether it intended for the convention to fill gaps in existing or future agreements. That might eliminate the reluctance of some States to become parties to the new instrument.

The meeting rose at 1 p.m.